No. 12078

In the United States Court of Appeals for the Ninth Circuit

WALTER TREPTE AND MARGARET TREPTE, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

ON PETITION FOR REVIEW OF THE DECISIONS OF THE TAX COURT OF THE UNITED STATES

BRIEF FOR THE RESPONDENT

THERON LAMAR CAUDLE,
Assistant Attorney General.
ELLIS N. SLACK,
A. F. PRESCOTT,
SUMNER M. REDSTONE,
Special Assistants to the Attorney General.

INDEX

CITATIONS

Cases:

Cases—Continued Page

In the United States Court of Appeals
for the Ninth Circuit

No. 12078

WALTER TREPTE AND MARGARET TREPTE, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

ON PETITION FOR REVIEW OF THE DECISIONS OF THE TAX COURT OF THE UNITED STATES

BRIEF FOR THE RESPONDENT

OPINION BELOW

The findings of fact and opinion of the Tax Court (R. 29-51) are not officially reported.

JURISDICTION

The petition for review (R. 54-64) involves federal income taxes for the years 1942 and 1943. On August 23, 1946, the Commissioner of Internal Revenue mailed to the taxpayers notices of deficiency in the total amount of $52,664.66. (R. 4, 16.) Within 90 days thereafter and on November 18, 1946, the taxpayers filed petitions with the Tax Court for a redetermination of the deficiency under the provisions of Section 272 of the Internal Revenue Code. (R. 4-14, 16-26). The decision of the Tax Court sustaining the deficiencies were entered May 28, 1948. (R. 52, 53.) The case is brought to this Court by a petition for review filed

August 23, 1948 (R. 54-64), pursuant to the provisions of Section 1141 (a) of the Internal Revenue Code, as amended by Section 36 of the Act of June 25, 1948.

QUESTIONS PRESENTED

1. Did the Tax Court properly determine that the family partnership established between taxpayers and their children was not bona fide for federal revenue purposes?

2. Did the Commissioner properly determine, in the alternative, that the attempted assignment by taxpayer to the partnership of his interest in the joint venture known as the Golden-Trepte Construction Company, whose assets consisted largely of construction contracts, was ineffective for federal revenue purposes?

STATUTE AND REGULATIONS INVOLVED

Internal Revenue Code:

> SEC. 22 [as amended by Public Salary Tax Act of 1939, c. 59, 53 Stat. 574, Sec. 1]. GROSS INCOME.
>
> (a) *General Definition.*—"Gross income" includes gain, profits, and income derived from salaries, wages, or compensation for personal service (including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *
>
> (26 U. S. C. 1946 ed., Sec. 22.)

SEC. 181. PARTNERSHIP NOT TAXABLE.

Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity. (26 U. S. C. 1946 ed., Sec. 181.)

Treasury Regulations 111, promulgated under the Internal Revenue Code:

SEC. 29.22 (a)-1. *What Included in Gross Income.*—Gross income includes in general compensation for personal and professional services, business income, profits from sales of and dealings in property, interest, rent, dividends, and gains, profits, and income derived from any source whatever, unless exempt from tax by law. (See sections 22 (b) and 116.) In general, income is the gain derived from capital, from labor, or from both combined, * * *

* * * * * * *

STATEMENT

The facts as found by the Tax Court are set out as follows (R. 29-46):

Walter Trepte (hereinafter and sometimes referred to as taxpayer) and Margaret Trepte are husband and wife and have resided in San Diego, California, since some time prior to their marriage in 1916. Neither taxpayer nor his wife had any property prior to their marriage. All property held by either of them is community property. Income tax returns for the periods here involved were filed with the Collector of Internal Revenue for the Sixth District of California, at Los Angeles. (R. 29.)

Taxpayer's father started in the construction business at San Diego, California, in 1895. From 1910 to 1912, taxpayer studied structural design at California School of Mechanical Arts, San Francisco. From 1912 to 1917 he worked for his father; the last two years of

this period were spent on a ranch, owned by his father, in the Imperial Valley. (R. 29.) In 1917, taxpayer's father and a partner, one Rambo, were conducting the business. At that time taxpayer gave his father a note for Rambo's share of the business, after which taxpayer and his father conducted the business as a partnership. The note was paid out of taxpayer's share of the earnings. (R. 29-30.)

In 1928, taxpayer bought his father's interest in that partnership. The dissolution was effected by a property division and a cash settlement. Thereafter, taxpayer operated his general contracting business under the name of "Walter Trepte Builder," as a sole proprietorship until the date of the creation of the alleged partnership of Trepte Construction Company on January 1, 1942. (R. 30.)

The business of taxpayer's father was commercial and engineering contracting. Taxpayer continued in this same field after he acquired the business in 1928. The work is technical in that it requires a knowledge of and skill in construction engineering, material and labor markets for the purpose of submitting bids. Taxpayer's architectural engineer education gave him real assistance in this phase of the business. (R. 30.)

Some time prior to July 6, 1940, taxpayer and one M. H. Golden associated themselves as joint venturers to operate as "Golden-Trepte Construction Co.," (hereinafter sometimes referred to as Golden-Trepte) for the purpose of engaging in contracting work for the Federal Government. Golden-Trepte obtained a large contract from the Navy Department for various types of construction in and around the naval facilities in the San Diego area. (R. 30-31.) The contract was signed by taxpayer and Golden, individually, on July 6, 1940. The contract was approved by the Navy Department on July 11, 1940. The contract, as it originally existed,

contemplated construction work in the amount of approximately $3,500,000. However, it was extended to cover projects which eventually had a cost of about $21,000,000. Under the contract, Golden-Trepte was required to obtain all material and supply all labor. The projects contemplated by this contract and extensions were completed in 1944. Work was begun in 1940. This contract was not obtained on bid but was negotiated at the request of the Navy. (R. 31.)

While engaged on the various projects under the Navy contract, Golden-Trepte also undertook other contract work for various governmental agencies and private corporations, including one fuel-depot project for the Navy which was not included in the above contract. Construction jobs were undertaken for Rohr Aircraft Company, as agent for Defense Plant Corporation, and San Diego Gas & Electric Company. The fuel-depot job and the Rohr Aircraft job had value of approximately $1,750,000. In addition to these, the Trepte Construction Company also did work for some customers, particularly the Ryan Aircraft Company. Taxpayer had a crew at Ryan from 1939 until the end of the war. (R. 31.)

The Navy contract provided that Golden-Trepte should designate a construction superintendent to have complete charge of all work under the contract. (R. 31.) It further provided that no person shall be assigned as superintendent, chief engineer, chief purchasing agent, chief assistant, or similar position in the field organization or as principal assistant to such persons, until the contracting officer shall approve the qualifications and experience of the person proposed for such assignment. The Rohr contract provided that the "contractor" (Golden-Trepte) shall keep on the job, at all times, a qualified representative, satisfactory to the other contracting party. (R. 31-32.)

Prior to January 1, 1942, taxpayer had between 75 and 100 employees in his individual business. Golden-Trepte had about 1,500 employees at the peak, which was reached in December 1941. The foreman and superintendent and others who had technical skills giving them responsibility comprised approximately 10 to 20 per cent of the employees for both organizations. (R. 32.)

In the summer of 1941, the Navy contract was extended to include certain construction on San Clemente Island, about 100 miles off the coast of San Diego. Taxpayer flew out to the project about once a week; due to fog, it was very hazardous. On an earlier trip the plane had nearly crashed and at that time he and Golden discussed what would become of the Navy contract in the event of one or both of their deaths, so taxpayer told Golden that he "had been considering having his sons go into partnership" with him, and that he thought that "they should get one formed" as soon as they could to carry on the business if anything happened to them. (R. 32.)

Taxpayer discussed the desirability of a "partnership" with his wife and two sons on several occasions and pointed out to them how he had been a "partner with his father" and showed them the advantage of coming into a "business which already had an established name for honesty and integrity." The latter part of 1941, taxpayer consulted an attorney about drawing up a partnership agreement, and a written "partnership agreement," effective January 1, 1942, was executed, naming as partners taxpayer, his wife and sons, Walter B. Trepte and Albert Eugene Trepte. (R. 33).

A certificate of doing business under a fictitious name, dated May 11, 1942, was filed with the State of California. On April 18, 1942, taxpayer and his wife executed an instrument entitled "Declaration of Eman-

cipation of Minor," which purported to free Albert Eugene Trepte from all control by his parents as of January 1, 1942. On April 22, 1947, after he attained his majority, Albert executed an instrument purporting to ratify and confirm his act in executing the document entitled "Articles of Co-Partnership," dated January 1, 1942. (R. 33.)

In the preamble, the Articles of Co-Partnership recite as follows (R. 33-34):

> That, Whereas, Wlater [sic] Trepte has for some time past been conducting a general contracting business in the City of San Diego, California, and also has been conducting a joint venture with M. H. Golden under the name of Golden & Trepte Construction Company, and
>
> > Whereas, said M. H. Golden and Walter Trepte in the fall of 1941 agreed among themselves to each form a separate family partnership as of January 1, 1942 for the ownership, management and operation of their respective contracting business and to include in their respective family partnerships the assets, accrued earnings and future earnings of said Golden & Trepte Construction Company, and
> >
> > Whereas, said Walter Trepte has conveyed to the parties hereto all of his interest in his contracting business and his interest in the assets, accrued earnings and future earnings of said Golen [sic] & Trepte Construction Company, and the parties hereto desire to hold all of said property as co-partners and to operate said contracting business as a co-partnership.

The "Partnership Agreement" provided (R. 34-35) that taxpayer and his wife each have a 26 per cent interest and each of the boys have a 24 per cent interest; that the "company" shall have an existence of 20 years from January 1, 1942; also, the capital of the partnership shall consist of——

Office equipment, planing mill equipment, trucks, machinery, cash in the bank, accounts receivable, naval air station job equity, being the equity in the partnership assets of Golden & Trepte Construction Company, and all other personal property now used by Walter Trepte in said business and also the good will of said business subject to all the liabilities of said business as of January 1, 1942, which appear on the books of said Walter Trepte as of said date, as follows:

Assets

Cash in bank		$29,197.68
Accounts Receivable		48,023.52
Work in Progress		29.06
Naval Air Station job equity *		88,458.88
Miscellaneous building material		1,846.81
Fixed equipment cost	$14,147.12	
Depreciation	3,510.14	
Net		$10,636.98
Total Assets		$178,192.93

Liabilities

Accounts payable	$15,079.36
Notes payable to banks	35,000.00
Reserve for insurance	612.91
Reserve for social security taxes	1,145.23
Reserve for North Island Equipment	1,600.54
Rental Adjustment	
Total Liabilities	$53,438.04
Net Worth	$124,754.89

* This item consisted of petitioner's interest in money owed to Golden-Trepte by the United States Navy, for labor and material furnished under the contract.

Each of the sons executed and delivered to his parents a promissory note in the amount of $29,941.17, the "purchase price" of their respective interests in the alleged partnership. (R. 35.)

The agreement provided that taxpayer should be general manager of the "Partnership." His duties as manager of the "partnership" were substantially the same as his duties as sole owner of the business before January 1, 1942. (R. 35.)

Each "partner" was to share in all profits and losses to the extent of the respective interest of each. (R. 35.) The agreement further provided as follows (R. 36):

> After the payment of salaries and certain allowances which shall be fixed from time to time by partners holding a majority interest all profits arising from the operation of said partnership shall be added to the capital of said partnership so long as such a majority interest so decides or in the discretion of the holders of a majority interest may be distributed but any distribution to the partners, Walter B. Trepte and Albert Eugene Trepte, will first be applied upon the payment of any outstanding balance of their notes before distribution be made to them individually.

The agreement provided that deposits to the partnership bank account could be made for the "partnership" by any "partner" or agent of the "partnership." Checks could be drawn on any partnership account by such of the "partners" and their agents as were chosen from time to time by holders of a majority interest. (R. 36.)

The agreement further provided (R. 36-37):

> No partner shall during the continuance of the partnership carry on any business in competition with, or be concerned or interested directly or indirectly in the same kind of business as that carried on by the partnership in the County of San Diego,

State of California, without the consent in writing of the other parties hereto, except consent is hereby given to Walter Trepte to carry on the business of Golden & Trepte Construction Company and other partnerships, joint ventures or corporations.

Since the time and efforts of partner Walter Trepte belong to said family co-partnership, and since the investment in the joint venture of Golden & Trepte Construction Company also belongs to the Trepte Construction Company, such of his time as may be spent on the joint ventures of Golden & Trepte Construction Company shall be considered partnership property and the resulting earnings of the Golden and Trepte joint venture shall be partnership earnings.

That any and all earnings from personal services outside of this family co-partnership shall be given due consideration in allocating partnership profits and losses.

Walter B. Trepte, the son of taxpayers herein, and one of the alleged partners, was born in San Diego, California, on November 6, 1918, and was 23 years of age on January 1, 1942. He went through high school, and had one-half year of college work at California State College. Prior to January 1, 1942, the alleged date of the partnership, Walter was employed at various times on his father's construction business. He so worked in the summers of 1935 and 1936, the fall of 1938, the entire year of 1939, and from July of 1940. In 1935 and 1936, he worked as a truck driver. In 1938, he did clerical work as assistant to the bookkeeper and timekeeper. For the remainder of 1940, he was employed by Golden-Trepte in the timekeeping office at the naval facility at North Island. He remained in this position until June 1941, when he went to the job at the Naval fuel depot, for Golden-Trepte. (R. 37). At the fuel depot he was in charge of personnel and timekeeping, did some bookkeeping and certain se-

curity work. (R. 37-38.) He hired and fired employees on the authority of Trepte or Golden. Certain employees, those on an hourly or day-to-day basis, he hired or fired as the need for their services rose or fell. From 1935 through 1941, he was carried on the pay rolls as an employee. His compensation ranged from $15 per week in the beginning to $35 per week in 1941 when he worked for Golden-Trepte. (R. 38.)

After the formation of the "partnership" on January 1, 1942, Walter B. Trepte worked for Golden-Trepte at the fuel depot. In June or July he went to the Golden-Trepte job at Rohr Aircraft Corporation, and in October or November he went back to the Golden-Trepte job at the Naval Air Station, where he remained until the completion of the contract in October or November of 1943. From October or November 1943, until the middle of 1944, he worked for the "partnership" at Rohr Aircraft, and following that he worked about four months at the Naval Air Station for Golden-Trepte. Since that time he has worked on Trepte Construction Company projects. Prior to January 1, 1942, Walter B. Trepte had never assembled the data necessary to prepare a bid for construction work, though he did help taxpayer and estimators employed by taxpayer to do so. Between January 1, 1942, and December 31, 1943, he assisted in the same manner. The work Walter B. Trepte performed prior to January 1, 1942, was done under taxpayer's supervision. (R. 38.) Much of the work after that date up to December 31, 1943, was also under taxpayer's supervision. (R. 38-39.) Some of the work performed during this period was approved by the "officer in charge of the Navy." From January 1, 1942, on, he was paid a regular salary of $55 per week by Trepte Construction Company. He received extra remuneration from Rohr Aircraft job which was put into the "partner-

ship." For the years 1943, 1944, 1945 and 1946, year-end bookkeeping entries were made on books of Trepte Construction Company, purporting to adjust Walter B. Trepte's salary to a basis of $4,800 per year. (R. 39.)

A drawing account was set up in the books of the "partnership" for Walter B. Trepte. His salary was charged to it and also certain other personal expenses, payments made on the note held by his parents, and all withdrawals for payments of federal and state income taxes. He also had a "capital account" in the books to which was credited his purported original 24 per cent interest and a like proportion of the subsequent profits from the "partnership" for each year. He has seen his drawing and capital accounts each year, but his examination was cursory and for his own information. He is not an accountant though he does understand something about the theory of accounting. (R. 39.)

Walter B. Trepte was authorized by the majority-interest partners to sign checks on the accounts of the Trepte Construction Company as provided in the alleged partnership agreement and did sign them. (R. 39.) He also signed checks on his father's account while the business was under the name of Walter Trepte, Builder. (R. 39-40.) Other persons also had authority to sign checks for Trepte Construction Company. (R. 40.)

All payments made by Walter B. Trepte on his note, held by his parents, and all payments for federal and state income taxes were made from profits of the business of Trepte Construction Company. (R. 40.)

The construction business requires one's having knowledge and experience in order to make bids for jobs, and prior to 1942 taxpayer was the only one qualified to do this work, though he hired estimators who prepared estimates which were ultimately approved or disapproved by him. After 1942, the same has gen-

erally been true, although since 1941 all or most of the construction work performed by Walter Trepte, Builder, has been on government contract. Walter B. Trepte had no inclination toward that technical end of the business. (R. 40.)

Albert Eugene Trepte, son of taxpayers herein and one of the alleged partners in Trepte Construction Company, was born September 8, 1925. He was 16 years of age on the date of creation of the alleged partnership. He worked for his father in the construction business in the summer of 1941 at the Naval fuel depot as crewman on a small craft and on a pile driver. In the summer of 1942, he worked on the Ryan Aircraft Company job as an assistant carpenter. On the fuel-depot job he received 75 cents per hour and 85 cents per hour on the Ryan job. He went to summer school in 1943. (R. 40.) On February 28, 1944, he was drafted into the United States Navy and was discharged June 7, 1946. (R. 40-41.) During part of 1946, he worked "down there in a capacity of rustling material." In 1947, he worked in the office taking care of bills. In September 1946, he entered on a course of study in architectural engineering at California State Polytechnic College at San Luis Obispo. This is a two-year course. (R. 41.)

The note given by Albert Eugene Trepte for his alleged interest in the Trepte Construction Company was paid from profits of the business. The "Company" paid for his personal needs, including clothing, recreation, tuition, school, expenses. It also paid his federal and state individual income taxes. All of these items were charged against a drawing account in his name on the books of Trepte Construction Company. (R. 41.)

In 1942, 1943, 1945 and 1946, taxpayer drew $20,000 per year as salary from the alleged partnership. In

1944, due to decreased business, he drew $10,000. (R. 41.)

Taxpayer was reasonably familiar with the various revenue bills of 1940, 1941 and 1942. He was reasonably familiar, from previous experience, with the amount of tax he would have to pay on his profits. He had a certified public accountant audit his books and prepare returns before the "partnership" and the same person performed similar work after the date of the creation of the alleged partnership. (R. 41.)

The books (Account No. 293) of Trepte Construction Company show the following as to withdrawals by Walter B. Trepte (R. 41-42):

Year	Note and Interest	Collector of Internal Revenue	Franchise Tax Commission	Checks drawn to Walter B. Trepte	Checks drawn for Walter B. Trepte	Total
1942**	.....	.....	.....	$495.00	.....	$495.00
1943***	$11,554.74	$14,036.58	$776.39	2,085.00	$10.30	28,463.01
1944	10,802.38	6,682.24	446.88	.....	7.55	17,939.05
1945	10,500.00	1,740.59	104.38	.....	20.00	12,364.97
1946	.....	24,827.76	638.46	100.00	591.53	26,157.75
1947****	.....	6,727.80	648.21	.....	1,211.11	8,587.12
Total	$32,857.12	$54,014.97	$2,614.32	$2,680.00	$1,840.49	$94,006.90*

*Total discrepancy of $5,862.37 between stipulation and amount shown in capital account not explained. Discrepancies appear in years 1942-3-4-5-6.
**The date of the first withdrawal recorded on the books was Nov. 2, 1942.
***First entry other than $55.00 salary payment—March 19, 1943.
****Last entry included here—Sept. 26, 1947.

The books of Trepte Construction Company show the following as to "capital of Walter B. Trepte" (R. 43):

Date	Descriptive Particulars	Debits	Credits	Balance
Mar. 31, 1943	Transfers of capital from Walter Trepte	.....	$28,941.17	$28,941.17
Mar. 31, 1943	Profit and Loss 1942	.....	29,665.07	58,606.24
Sept. 18, 1943	Adj. error in previous entry recording share purchased from Walter Trepte	.....	1,000.00	59,606.24
Feb. 16, 1944	Closing 1943 entries	$26,877.05	.....	.....
Feb. 16, 1944	Closing 1943 entries	.....	23,664.00	56,393.19
Dec. 30, 1944	Walter B. Trepte withdrawals	17,843.71	.....	.....
Dec. 30, 1944	Profit and Loss 1944 Distribution	.....	8,336.56	46,886.04
Dec. 31, 1945	Walter B. Trepte withdrawals	10,472.65	.....	.....
Dec. 31, 1945	Profit and Loss 1945 Distribution	.....	25,389.29	61,802.68
Dec. 31, 1946	Walter B. Trepte withdrawals	24,364.00	.....	.....
	Profit and Loss 1946 Distribution	.....	25,067.35	62,506.03

The books (Account No. 294) of Trepte Construction Company show the following as to "withdrawals by Albert Eugene Trepte" (R. 44):

Year	Note and Interest	Collector of Internal Revenue	Franchise Tax Commission	Checks drawn to Albert Eugene Trepte	Checks drawn for Albert Eugene Trepte	Total
1943*.....	$11,554.74	$12,413.21	$987.11	$750.00	$5.00	$25,710.06
1944.....	10,529.78	5,302.29	346.76	.....	676.88	16,855.71**
1945.....	10,463.27	52.23	55.65	.....	.....	10,571.15
1946.....	.....	20,110.97	428.77	500.00	186.23	21,225.97
1947***.....	.....	4,800.55	417.13	750.00	44.80	6,012.48
	$32,547.79	$42,679.25	$2,235.42	$2,000.00	$912.91	$80,375.37

*First entry recorded on the books—March 27, 1943.
**$209 unexplained discrepancy between stipulation and amount shown in capital account.
***Last entry included here—September 3, 1947.

The books of Trepte Construction Company show the following as to "capital of Albert Eugene Trepte" (R. 45):

Date	Descriptive Particulars	Debits	Credits	Balance
Mar. 31, 1943	Transfer of capital from Walter Trepte.....	.....	$28,941.17	$28,941.17
Mar. 31, 1943	Profit and Loss—1942.....	.....	29,665.07	58,606.24
Sept. 18, 1943	Adj. error in previous entry recording share purchased from Walter Trepte.....	.....	1,000.00	59,606.24
Feb. 16, 1944	Closing 1943 Entries.....	$25,710.06	.....	.....
Feb. 16, 1944	Closing 1943 Entries.....	.....	23,664.00	57,560.18
Dec. 30, 1944	Albert Eugene Trepte withdrawals.	16,646.71	.....	.....
Dec. 30, 1944	Profit and Loss 1944 Distribution..	.....	8,336.56	49,250.03
Dec. 31, 1945	Albert Eugene Trepte withdrawals.	10,571.15	.....	.....
Dec. 31, 1945	Profit and Loss 1945 Distribution..	.....	25,389.28	64,068.16
Dec. 31, 1946	Albert Eugene Trepte withdrawals.	21,225.97	.....	.....
Dec. 31, 1946	Profit and Loss 1946 Distribution..	.....	25,067.35	67,909.54

Partnership returns of income filed with the Collector of Internal Revenue for the Trepte Construction Company showed the following in schedule J (R. 46):

Name	1942 Ordinary Net Income	1942 Long Term Gain	1943 Ordinary Net Income	1943 Long Term Gain
Walter Trepte.....	$60,822.35	$686.93	$44,467.92	$584.05
Margaret Trepte.....	57,054.46	644.37	24,980.04	327.98
Walter B. Trepte.....	29,529.06	333.49	25,523.78	335.11
Albert E. Trepte.....	29,009.80	327.63	23,058.26	302.87
Total.....	$176,415.67	$1,992.42	$118,030.00	$1,550.01

SUMMARY OF ARGUMENT

The record overwhelmingly supports the determination of the Tax Court that no valid partnership was established between taxpayers and their children for federal revenue purposes. The sons contributed no capital to the business "originating" with them. Their alleged purchase of the business assets by the execution of notes to their parents, to be satisfied out of the business earnings, did not constitute a contribution. The assets of the business remained exactly the same. The services rendered to the business by the younger son, Albert Eugene, were obviously negligible. Although the older son did work steadily for the business before, during, and after the taxable years involved, the record fully justifies the determination of the Tax Court that his services were largely clerical, were not "vital" and were adequately compensated for by his salary. Moreover, taxpayer continued to dominate the business subsequent to the formation of the partnership as before; and under the partnership agreement he exercised extensive control over its assets, its profits and every phase of the business operations. This being so, his economic status remained in substance unchanged. Since the determination of the Tax Court that the partnership was not bona fide for federal revenue purposes is patently not clearly erroneous, it may not be disturbed on appeal.

Although the Tax Court was not required to reach the second question, in view of its decision on the first, it is nevertheless manifest that the Commissioner properly determined that taxpayer's attempted assignment of his interest in the Golden-Trepte joint venture constituted an assignment of his past and future earnings and was thus ineffective for federal revenue purposes.

ARGUMENT

I

The Record Fully Supports the Determination of the Tax Court That the Family Partnership Established by the Taxpayers and Their Children Is Not Bona Fide for Federal Revenue Purposes

Since the principal issue presented on this appeal is the validity of a so-called family partnership for federal income tax purposes, no extensive recitation or analysis of authorities is requisite. Suffice it to point out that although such partnerships may not be discriminated against as such, the trial court is justified in concluding that the alleged partnership lacks reality unless the transferee partner "invests capital originating with her [him] or substantially contributes to the control and management of the business, or otherwise performs vital additional services, or does all of these things." *Commissioner* v. *Tower,* 327 U. S. 280, 290: *Lusthaus* v. *Commissioner,* 327 U. S. 293. In addition, other criteria may be examined as bearing on the *bona fides* of the arrangement, such as the extent of control which the taxpayer continues to exercise over the partnership business, the extent of profit distribution to the transferee partners, the alienability of the partnership interest, and the motives leading to the formation of the partnership. *Belcher* v. *Commissioner,* 162 F. 2d 974 (C. A. 5th), certiorari denied, 332 U. S. 824. In each case the ultimate objective is the taxation of income to those who actually earn it or create the right to receive or enjoy it. The existence of a capital contribution, the rendition of vital additional services, and the genuineness of the family partnership arrangement are in every case questions of fact, to be determined by the trial court; and its findings may not be disturbed on appeal unless clearly erroneous. *Nordling* v. *Commissioner,* 166 F. 2d 703 (C. A. 9th), certio-

rari denied, 335 U. S. 817; *Blalock* v. *Allen,* 151 F. 2d 927 (C. A. 5th). An examination of the evidence in the instant case in the light of the standards set out above makes manifest the correctness of the lower court's determination.

The undisputed evidence discloses that no capital "originating" with the transferee partners was invested in the partnership business. Taxpayer had operated his general contracting business, the assets of which were owned in community with his wife, as a sole proprietorship since 1928. (R. 30, 65.) In the latter part of 1941 taxpayer consulted an attorney about drawing up a partnership, and a partnership agreement was executed, the partnership consisting of the taxpayer, his wife, and his two sons, Walter B. Trepte and Albert Eugene Trepte. At the time of the formation of the partnership the former was twenty-three years old and the latter sixteen. (R. 66.) On April 18, 1942, taxpayer and his wife executed a "Declaration of Emancipation of Minor" providing for the emancipation of Albert Eugene Trepte from the disabilities of minority as of January 1, 1942. (R. 67.) Under the partnership agreement taxpayer and his wife each retained a 26 percent interest in the business and each of their sons obtained a 24 percent interest. (Ex. 1, p. 3.) The sons purportedly "paid for" their respective interests by executing promissory notes in the amounts of $29,941.17, the alleged "purchase price." (Ex. 1, p. 3; R. 35.) The notes were to be paid out of the sons' shares of the earnings of the business. (Ex. 1, p. 3; R. 36.) No argument is requisite to demonstrate that no new capital was required or obtained by taxpayer as a consequence of this arrangement. The assets of the business remained exactly the same. Indeed, in this respect, the case is almost on all fours with the *Lusthaus* case, *supra,* where the wife similarly

signed notes and subsequently paid them off out of the earnings of the business. The Supreme Court held there that the wife did not contribute capital "originating" with her. The contention of the taxpayer that his sons contributed capital originating with them by virtue of their execution of promissory notes for the "purchase" of the assets, and the satisfaction of the notes out of the business earnings is similarly inconsistent with this Court's recent decision in *Nordling* v. *Commissioner, supra.*

It is equally manifest that, as the Tax Court found (R. 48), neither son rendered vital additional services to the business. The most cursory analysis of the record suffices to demonstrate that the services rendered by Albert Eugene Trepte, who was sixteen years old at the time of the formation of the partnership, were negligible. Prior to the formation of the partnership, Albert Eugene Trepte had worked for the taxpayer during the summer of 1941 as a crewman on a small craft, receiving as compensation 75 cents an hour. Subsequent to the formation of the partnership he worked for taxpayer during the summer of 1942 as an assistant carpenter, receiving the sum of 85 cents an hour. (R. 104-105, 47.) He rendered no services during 1943, entered the United States Navy in 1944, and was not discharged until 1946. (R. 103.) Shortly thereafter he entered college. (R. 106.) It is not easy to understand how it can seriously be contended that any portion of the partnership earnings was attributable to a contribution of capital or services by Albert Eugene Trepte.

As for Walter B. Trepte, though it be true that he did work regularly for the taxpayer, the Tax Court was nevertheless justified in its determination that his services were not vital; that they were largely of a clerical nature; and that they were in essence the serv-

ices not of a partner but of an employee, for which Walter was adequately compensated. (R. 48.) At the outset, it should be noted that the taxpayer's business consisted of the construction of buildings, factories, warehouses, bridges, roads, et cetera, and involved millions of dollars of contracts. (R. 127, 137-138.) The operation of the business required a knowledge of and skill in engineering and construction engineering, materials, labor markets, prices, et cetera. (R. 138.) Although taxpayer himself had studied structural designing for two years as a young man, and this education was of great assistance to him (R. 121-122), Walter B. Trepte's education in the field of engineering and construction consisted of his starting an economics course during his one term of college (R. 75, 154). In fact, taxpayer's wife, Margaret Trepte, testified that taxpayer was the only one among the four who at the time of the formation of the partnership had the necessary education, training and skill, technically and otherwise, to carry on the business (R. 118), and this was confirmed by the testimony of Walter B. Trepte himself (R. 94-95). It seems clear from the record that Walter B. Trepte had no particular inclination toward or interest in the technical aspects of the business (R. 153-154, 40), and yet it is difficult to conceive of a business which requires more in the way of technical training and interest than taxpayer's business. Prior to January 1, 1942, Walter B. Trepte was employed in taxpayer's construction business during the summers of 1935 and 1936, the fall of 1938, the entire year of 1939, and the latter half of 1940. (R. 37, 76.) In 1935 and 1936 he worked as a truck driver, did clerical work as an assistant to the bookkeeper and timekeeper in 1938, and was employed by the Golden-Trepte joint venture in the time keeper's office in 1940. (R. 76.) In 1941 he was in charge of personnel and

time keeping and did some bookkeeping and security work for Golden-Trepte. (R. 77.) With the exception of the hourly and daily workers, however, his hiring and firing of personnel was done strictly under the authority of his father and Golden. (R. 101-102.) During this period he was compensated at a rate beginning $15 a week and reached $35 per week in 1941. (R. 38, 78.) After January 1, 1942, the effective date of the alleged "partnership", he continued to work for Golden-Trepte and remained in the employ of Golden-Trepte during the greater part of the period from January 1, 1942, until October or November, 1943. (R. 78-79, 38.) Thus during the greater part of the taxable years involved, 1942 and 1943, Walter B. Trepte did not work directly for the partnership. From October or November, 1943, he worked for the partnership until the middle of 1944. Subsequently he worked for Golden-Trepte for four months, and has since worked for the partnership. (R. 79.) Any hiring or firing of employees subsequent to the formation of the partnership, with the exception of the hourly and daily workers, was also carried out only after discussion with his father. (R. 102, 38.) After the formation of the partnership, Walter B. Trepte's other duties were also largely under the direction and supervision of the taxpayer. (R. 143, 39.) Neither before nor after the formation of the partnership did Walter B. Trepte himself ever assemble the data necessary for the preparation and submission of a bid to the Government or anyone else. The testimony was somewhat vague in this respect, indicating that he had helped the estimators. (R. 38, 156-157.)

Thus it appears that the trial court's findings that the duties of Walter B. Trepte were not "vital" and were adequately compensated for by the payment of salary are supported by the record. There is entirely

lacking here that "mutual investment of capital and services" necessary for the effective creation of a family partnership for federal revenue purposes. *Mead* v. *Commissioner,* 131 F. 2d 323, 324 (C. A. 5th), certiorari denied, 318 U. S. 777.

Taxpayer concedes that the sons were merely employees of their father up until January 1, 1942, but argues that this was changed after they signed promissory notes and agreed to share the losses and profits. (Br. 34.) It is hardly necessary to note the unrealistic nature of this contention. There is nothing in the record to indicate that the sons had any property apart from their salaries from the business. This being so, their assumption of liability would appear to be highly fictional. Taxpayer's further statements (Br. 34, 35) that it was the skill of the father, and his two sons "that brought about the success of the Trepte Construction Co." and that "the services of the two sons were valuable and vital to the operations" border on the ridiculous. The business involved millions of dollars at the time of the formation of the partnership. There is not an iota of evidence to indicate that the business was increased by virtue of the sons' activities. Neither son brought any new capital into the business. The younger son worked for taxpayer only a few months in total during the taxable years. The older son never assumed a vital role in the conduct of the business, nor was he equipped to do so. As might be expected, taxpayer attempted at the trial, and attempts on appeal, to exalt the duties of his older son to a status of more influence and dignity than they warrant. Taxpayer, in effect, argues as if this Court were free to draw its own inferences, without regard to the findings of the Tax Court. The courts have been in unanimous agreement with the proposition reiterated in *Eisenberg* v. *Commissioner,*

161 F. 2d 506 (C. A. 3d), certiorari denied, 332 U. S. 767, as follows (p. 510):

> Little can be accomplished toward ultimate determination of the tax responsibility, at least in this class of cases, by ferreting out analogous parts of other cases, particularly since "no one fact is decisive". It is well-settled that the Tax Court's determination, if supported by the facts, is conclusive. That we would not be inclined to draw the same conclusions or make the same inferences is of no significance whatever.

Apart from the failure of the taxpayer's sons to contribute either capital or vital services, an examination of the other evidence in this case gives cumulative proof of the lack of reality in the purported partnership. The record demonstrates that taxpayer continued to control the business operations, its assets and profits, after the formation of the partnership as well as before. Under the partnership agreement (Ex. 1, p. 3), taxpayer was made the general manager of the business. A reading of the record in its entirety discloses that taxpayer continued to dominate the business subsequent to the partnership agreement, as he had prior thereto. Taxpayer testified that he carried on his business before and after the formation of the partnership in the same way. (R. 165.) Most important, however, is the fact that under the partnership agreement taxpayer retained the same absolute control of all phases of the business as he had when the business was operated as a sole proprietorship and its assets owned in community by the taxpayer and his wife. The taxpayer and his wife had each retained a 26 percent interest in the partnership. (Ex. 1, p. 3.) Under the partnership agreement (R. 36) it was provided that "all profits arising from the operation of said partnership shall be added to the capital of said partnership so long as such a

majority interest so decides or in the discretion of the holders of a majority interest may be distributed * * *." Thus taxpayer and his wife could absolutely preclude the distribution of any profits to their two sons, while at the same time drawing from the business as much as they desired for themselves in salary. In this connection, it should be noted the taxpayer received $20,000 a year salary during the years 1942, 1943, 1945 and 1946. (R. 41.) The partnership agreement further provided that inventories of assets could be certified only by a partner delegated by partners holding a majority interest (Ex. 1, p. 4); that on dissolution an accounting should be taken which, when signed by the holders of the majority interest, would be conclusive (Ex. 1, p. 4); that checks could be drawn only by such partners and their agents who were delegated by the holders of a majority interest (Ex. 1, p. 5); that no partner could become bail or security for any person without the consent of partners holding a majority interest (Ex. 1, p. 5); that no partner could, without the consent of the partners holding a majority interest, loan any money or property of the partnership, accept or sign any bill of exchange or promissory note, buy or contract to buy any goods or merchandise, contract any debt on account of the partnership, or employ any of the partnership monies, or in any manner pledge the security thereof (Ex. 1, p. 5); and that on dissolution, the value set on the personal property should be that fixed by the holders of the majority interest (Ex. 1, p. 7). The partnership agreement also provided for limited restrictions on alienability, setting forth that the selling partner must first offer his interest to the other partners, and granting the other partners the option to purchase the share at the value fixed under the terms of the partnership agreement within

thirty days of the determination of the value as provided.

A mere reading of the partnership agreement suffices to demonstrate that the taxpayer never parted with any control over the business, its assets and the profits. In view of the taxpayer's wife's testimony that she left everything to her husband's best judgment (R. 120), it could not be reasonably anticipated that she would refuse to accede to any of his decisions. In short, taxpayer's economic status remained unchanged despite the formation of the partnership. Not only did he continue to earn the income, but he continued to exercise command over it. In order that his economic freedom might not in any way be abridged, the partnership agreement, while restricting the right of any other partner to engage in a competing business, left taxpayer free to engage in any business he desired. (Ex. 1, pp. 5-6.) Were taxpayer to prevail in this case, the consequence would be that family heads, while continuing to enjoy substantially the same control and economic benefits, could divide up single tax earnings into numerous tax units "by the simple expedient of drawing up papers." *Commissioner* v. *Tower, supra,* p. 291. Moreover, it is of significance to note that during the entire period from 1942 to 1946 only insignificant sums were withdrawn from the business by taxpayer's sons. Although the sum of $113,122.27 was added to the account of Walter B. Trepte, and $113,122.26 to that of Albert Eugene Trepte during this period, the record indicates that the most Walter B. Trepte drew for his personal use was $4,520.49 over the entire six-year period, and Albert Eugene Trepte withdrew $2,912.91 over the same period. Apart from the payments on "Note and Interest", "Collector of Internal Revenue", and "Franchise Tax Commission" over the six-year period $2,680 was indicated as "Checks drawn

to Walter B. Trepte" and $1,840.49 as "Checks drawn for Walter B. Trepte". As for Albert Eugene Trepte, $2,000 was indicated as "Checks drawn to Albert Eugene Trepte", and $912.91 as "Checks drawn for Albert Eugene Trepte". (R. 42-45, Exs. 13, 14.)

Also of some significance is the fact that although the partnership was allegedly established as of January 1, 1942, capital accounts were not set up for either son until March 31, 1943. The date first appearing on Albert Eugene Trepte's withdrawal account was March 27, 1943, and on Walter B. Trepte's withdrawal account was November 30, 1942. (R. 42-45, 49.) Taxpayer testified that the transition from his individual business to the partnership was gradual. (R. 134.) On the other hand, it may easily be perceived that unless the partnership was effectively created on January 1, 1942, under no view of the facts could the total income earned subsequently thereto constitute partnership income for federal revenue purposes.

Finally, as the Tax Court observed, the following paragraph of the partnership agreement would lend further support to the Commissioner's determination that the arrangement between taxpayer and his family was not intended as a partnership in the ordinary business sense. The paragraph reads as follows (R. 50, Ex. 1, p. 6):

> That any and all earnings from personal services outside of this family co-partnership shall be given due consideration in allocating partnership profits and losses.

Taxpayer has argued that no tax avoidance scheme existed and consequently that the partnership was *bona fide*. Tax avoidance motives are not susceptible of easy proof and the record is not conclusive in this respect. It seems clear that taxpayer was at least aware of the tax consequences of the family partner-

ship. He testified that he was aware that the tax rates were going up, that he was reasonably familiar with the amount of taxes due on the earnings of his business, and that the passage of the two Revenue Acts of 1940 would normally have come to his attention. (R. 160-161.) A reading of the record at pages 166-167 demonstrates that the lower court was not satisfied with taxpayer's testimony as to the tax considerations in the formation of the family partnership. At one point, in answer to the court's instruction that he state the extent to which he took into consideration the matter of dividing up income in forming the partnership, taxpayer testified: "Well, I don't think we considered it particularly." (R. 167.) On further questioning, he stated that he did not consider the tax consequences at all. Taxpayer stated that the purpose in forming the partnership was so that his sons could "carry on in the case of my death." (R. 167.) Yet his wife had testified that taxpayer was the only one equipped to carry on the business. (R. 118.) Also, taxpayer himself had conceded that his younger son could not carry on the business. (R. 156.) The record would further indicate that the older son was neither educationally nor technically equipped to do so. At any rate, the existence of a tax avoidance motive is in no sense determinative but "simply lends further support to the inference * * * that no partnership right exists." *Commissioner* v. *Tower, supra,* p. 289.

Taxpayer has attempted to ferret out analogous portions of other partnership cases which have been decided for taxpayers. As previously indicated, such an approach can avail little, since each case is dependent upon its own facts and the appellate court's function is limited to an inquiry as to whether the Tax Court's determination of the *bona fides* of the partnership arrangement is clearly erroneous. In placing his

chief reliance on *Culbertson* v. *Commissioner,* 168 F. 2d 979 (C. A. 5th), certiorari granted December 6, 1948, taxpayer relies on what is perhaps the most extreme decision rendered in recent years by an appellate court in the field of family partnerships. The *Culbertson* case is on its face not only inconsistent with the United States Supreme Court's holdings in the *Tower* and *Lusthaus* cases, and with a legion of appellate decisions in every Circuit,[1] but marks a radical departure from the approach taken by the Court of Appeals for the

---

[1] See, e.g., Ninth Circuit: *Nordling* v. *Commissioner,* 166 F. 2d 703, certiorari denied, 335 U. S. 817; *Quon* v. *Commissioner,* 165 F. 2d 215, certiorari denied, 334 U. S. 845. Second Circuit: *Seifert* v. *Commissioner,* 157 F. 2d 719; *Seibert* v. *Commissioner,* 156 F. 2d 227; *Miller* v. *Commissioner,* 150 F. 2d 823; *Waldburger* v. *Helvering,* 131 F. 2d 598; *Fletcher* v. *Commissioner,* 164 F. 2d 182, certiorari denied, 333 U. S. 855. Third Circuit: *Eisenberg* v. *Commissioner,* 161 F. 2d 506, certiorari denied, 332 U. S. 767; *Davis* v. *Commissioner,* 161 F. 2d 361; *Walker* v. *Commissioner,* 160 F. 2d 313; *Lusthaus* v. *Commissioner,* 149 F. 2d 232, affirmed, 327 U. S. 293; *Sweigard* v. *Commissioner,* 149 F. 2d 646. Fourth Circuit: *Wilson* v. *Commissioner,* 161 F. 2d 556, certiorari denied, 332 U. S. 769; *Mauldin* v. *Commissioner,* 155 F. 2d 666; *Hash* v. *Commissioner,* 152 F. 2d 722, certiorari denied, 328 U. S. 838, rehearing denied, 328 U. S. 879; *Economos* v. *Commissioner,* 167 F. 2d 165, certiorari denied, 335 U. S. 826. Sixth Circuit: *Hougland* v. *Commissioner,* 166 F. 2d 815, certiorari denied, 334 U. S. 846; *Dawson* v. *Commissioner,* 163 F. 2d 664; *Lowry* v. *Commissioner,* 154 F. 2d 448, certiorari denied, 329 U. S. 725; *Lorenz* v. *Commissioner,* 148 F. 2d 527, certiorari denied, 327 U. S. 786; *Thorrez* v. *Commissioner,* 155 F. 2d 791; *Camfield* v. *Commissioner,* 154 F. 2d 1016; *Livie* v. *Commissioner,* 155 F. 2d 728; *Ewing* v. *Commissioner,* 157 F. 2d 679; *DeKorse* v. *Commissioner,* 158 F. 2d 801; *Greenberg* v. *Commissioner,* 158 F. 2d 800; *Schreiber* v. *Commissioner,* 160 F. 2d 108; *MacDonald* v. *Commissioner,* 165 F. 2d 213; *Epps* v. *Commissioner,* 164 F. 2d 482; cf. *Weinstein* v. *Commissioner,* 166 F. 2d 81. Seventh Circuit: *Appel* v. *Smith,* 161 F. 2d 121; *Tinkoff* v. *Commissioner,* 120 F. 2d 564. Eighth Circuit: *Doll* v. *Commissioner,* 149 F. 2d 239, certiorari denied, 326 U. S. 725; *Supornick* v. *Commissioner,* 150 F. 2d 110; *Tyson* v. *Commissioner,* 146 F. 2d 50. Tenth Circuit: *Earp* v. *Jones,* 131 F. 2d 292, certiorari denied, 318 U. S. 764; *Grant* v. *Commissioner,* 150 F. 2d 915; *Bradshaw* v. *Commissioner,* 150 F. 2d 918; *Losh* v. *Commissioner,* 145 F. 2d 456.

Fifth Circuit itself.[2] Insofar as the decision in the *Culbertson* case was premised on the theory that a "legal" sale was consummated, the consideration being the execution of notes to be paid out of the business earnings, the court adopted a formalistic approach, specifically rejected in the *Lusthaus* case, and indeed on its facts in the teeth of the *Lusthaus* case. Insofar as the decision rests on the theory that the partnership may be effective, even though the services are to be rendered subsequent to the taxable years involved, the Court overlooked the underlying basis of the *Tower* and *Lusthaus* decisions, which is to tax the income to its earner. That the alleged partner might some time in the future render vital services has little bearing on the question as to who was the creative source of the income during the taxable years involved. Insofar as the decision was premised on the theory that the contribution of service to the United States Armed Forces by one who was not prior thereto a partner in the tax sense is sufficient to dispense with the requirement of "vital additional services", it can be supported by no rational argument; for obviously war service cannot create a partnership among private individuals. Insofar as the decision ignores the determination of the Tax Court, which was overwhelmingly supported by the evidence, it was based upon an apparently erroneous concept as to the scope of the appellate court's review. It is undoubtedly for these reasons that the

---

[2] *Scherf* v. *Commissioner,* 161 F. 2d 495, certiorari denied, 332 U. S. 810; *Benson* v. *Commissioner,* 161 F. 2d 821; *Belcher* v. *Commissioner,* 162 F. 2d 974, certiorari denied, 332 U. S. 824; *Mead* v. *Commissioner,* 131 F. 2d 323, certiorari denied, 318 U. S. 777; *Argo* v. *Commissioner,* 150 F. 2d 67, certiorari denied, 326 U. S. 762; *Sewell's Estate* v. *Commissioner,* 151 F. 2d 806, certiorari denied, 327 U. S. 805; *Sewell* v. *Commissioner,* 151 F. 2d 765, certiorari denied, 327 U. S. 783; *Dawes* v. *Allen,* 157 F. 2d 518; *Blalock* v. *Allen,* 151 F. 2d 927; *Morton* v. *Thomas,* 158 F. 2d 574, certiorari denied, 330 U. S. 834.

United States Supreme Court granted certiorari from the decision in the *Culbertson* case on December 6, 1948.

II

Taxpayer's Attempted Assignment to the Partnership of His Interest in the Joint Venture Known as Golden-Trepte Construction Company, Whose Assets Consisted of Government Construction Contracts, Was Ineffective for Tax Purposes

The Commissioner determined, not only that the partnership was ineffective for federal revenue purposes, but, alternatively, that the assignment to it by taxpayer of his interest in the Golden-Trepte contracts was ineffective. Since the Tax Court decided for the Commissioner on the first issue, it found it unnecessary to consider the second, the income being taxable to taxpayer and his wife under either theory. Inasmuch as the Tax Court made no determination of this issue, and inasmuch as its decision on the first issue is not subject to serious attack on appeal, no extensive treatment of the latter problem is here undertaken. However, the Commissioner firmly believes in the validity of the alternative determination. An examination of the various contracts demonstrates that in essence they were cost-plus-fixed-fee contracts. (Exs. K, L.) The contracts were signed by no one but taxpayer and Golden. No one was liable on the contracts except taxpayer and Golden. There can be no question, on the record, but that they were awarded on the basis of taxpayer's personal reputation for integrity and competence as an engineer. The work required the personal service and supervision of the contractors. Cf. *Wittenberg* v. *Commissioner,* decided December 13, 1944 (1944 P-H T. C. Memorandum Decisions, par. 44,293). The authority is overwhelmingly to the effect that the attempted assignment of past or future income flowing from the personal skill and services of the tax-

payer is ineffective for tax purposes. *Lucas* v. *Earl,* 281 U. S. 111; *Earp* v. *Jones,* 131 F. 2d 292 (C. A. 10th), certiorari denied, 318 U. S. 764; *Burnet* v. *Leininger,* 285 U. S. 136.

CONCLUSION

The decisions of the Tax Court should be affirmed.

Respectfully submitted,

THERON LAMAR CAUDLE,
Assistant Attorney General.
ELLIS N. SLACK,
A. F. PRESCOTT,
SUMNER M. REDSTONE,
Special Assistants to the Attorney General.

FEBRUARY, 1949.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1949 822281 383